

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
SUPPLEMENTAL  
APPENDIX**

75-1033

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Pg 5

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-1033

UNITED STATES OF AMERICA

Appellee

CLYDE O. LEACH

Defendant - Appellant

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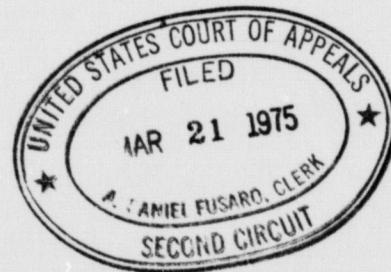
ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

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SUPPLEMENTARY APPENDIX FOR APPELLANT CLYDE O. LEACH

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Norman Cohen  
Attorney for Clyde O. Leach  
(Appointed by this Court)



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PAGINATION AS IN ORIGINAL COPY

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

CLYDE O. LEACH

*Cr. 74-24*  
Title 18  
United States Code  
Section 2312

The Grand Jury charges:

On or about February 2 and 3, 1974, in the District of Vermont, CLYDE O. LEACH, the defendant, knowingly and willfully did transport in interstate commerce from Rutland, in the District of Vermont, to Manchester, in the District of New Hampshire, a motor vehicle, to wit, a 1970 Volkswagon convertible, VIN 1502305702 knowing the same to have been stolen; all in violation of Title 18, United States Code, Section 2312.

A TRUE BILL

*Ann L. Barr*

Foreman

GEORGE W. F. COOK  
UNITED STATES ATTORNEY

By DAVID A. REED

DAVID A. REED  
ASSISTANT U. S. ATTORNEY

FEBRUARY 28, 1974

FILED  
U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FEB 28 2 03 PM '74  
CLERK  
DEPUTY CLERK





DATE	PROCEEDINGS
1974	
Mar. 5	Filed Deft.'s Motion to Reduce Bail and Modify Conditions of Bail. 6.
" 8	In Court before Judge Holden. David Reed, Esq. for Govt.; Norman
	Cohen, Esq. for Deft. Deft. present in Court with his attorney.
" "	Hearing on Deft.'s Motion to Reduce bail and modify conditions of bail.
" "	Statements made to Court by Mr. Cohen and states Deft's employer is
	willing to employ Deft. is released on bail; objected to by Mr.
	Reed for Govt.
" "	ORDERED: Motion denied.
" 12	Filed Appearance Bond for Deft. Leach in the amount of \$5,000.00
" 18	Filed Deft.'s Motion for Discovery and Inspection. 8
" "	Filed Deft.'s Memorandum of Law in support of Motion to Produce
	Grand Jury Minutes. 9.
" 25	Filed Government's response to Defendant's Motion to Produce Grand
	Jury Minutes. 10.
" 25	Filed Order appointing Norman Cohen, Esq. as Counsel for Deft. 11.
Apr. 8	Filed Deft.'s Memorandum in support of Motion for Discovery and
	Inspection. 12
May 2	Filed Govt.'s Response to Deft.'s Motion and Memorandum for Discovery
	and Inspection. 13
" 3	In Court before Judge Holden. David Reed, Esq. for Govt.; Norman
	Cohen, Esq. for Deft. Deft. not present in Court.
" "	Filed Waiver of Deft.'s presence. 14.
" "	Hearing on Deft.'s Motion for Discovery and Inspection.
" "	Statements made to Court by Mr. Cohen in support of Deft.'s motion
	and states Govt. has complied as to Rule 16(a); however, has
	not complied as to other requests in motion; followed by
	Mr. Reed.
" "	ORDERED: Govt. to disclose any witnesses and any criminal record
	which Govt. has knowledge. Disclosure of Grand Jury minutes
	denied; photographs to be furnished.
✓ " 9	Filed Government's Motion to Compel Handwriting Exemplars. 15.
" "	" Memorandum of Law in support of Government's Motion for Hand-
	writing Exemplars. 16.
" "	" Government's Certificate of Service re above Motion & Memo. 17.
✓ " 15	In open Court before Judge Holden. David Reed, Ass't. U. S.
	Attorney for Government. Norman Cohen, Esq., for Defendant.
" "	Hearing on Government's Motion to Compel Handwriting Exemplars.
" "	Filed Defendant's Opposition to Motion to Compel Handwriting
	Exemplars. 18.
" "	Filed Defendant's Ex Parte Application for Funds to Employ Expert
	Witness. 19.
" "	Statements made to Court by Mr. Cohen in support of his opposition
	to Motion to Compel Handwriting exemplars.
" "	Statements made to Court by Mr. Reed in support of his Motion.
" "	ORDERED: that the U. S. Attorney will prepare an Order granting
	the motion for Defendant to appear and submit exemplars of
	his handwriting on May 23 at the Office of the U. S. Attorney
	and Defendant may have assigned counsel, Mr. Cohen, present.
	If the time can be fixed between counsel, Court will sign the
	Order today.
" "	Court states to counsel it will withhold any further action, ex-
	cluding the ex parte request, pending giving of the exemplars
	in this case.
" "	Court states to Mr. Cohen it will not authorize this expense unless



DATE	PROCEEDINGS
1974	
May 15	Court is satisfied there is an initial need for it.
" "	Mr. Reed requested Court to modify conditions of bail, objected to by Mr. Cohen.
" "	ORDERED: that Court will issue an Order that Mr. Leach appear at the time indicated on May 23rd, for giving a copy of exemplars. If Mr. Leach fails to report at that time Court will then modify conditions of his bail.
" "	Court states for record, as a result of the last hearing on the Motion for Discovery and Inspection advanced by the Defendant which was filed April 8th, there is no pending matters in that; agreement has been reached through counsel.
" "	Mr. Reed states to Court counsel have agreed on the time in the Order to be prepared to be at 9:00 A.M. at the U. S. Attorney's Office on May 23rd.
" "	Filed Court's Order to Compel Taking of Handwriting Exemplars. 20.
" "	Mailed copy to attorneys.
June 12	In open Court before Judge Holden. William B. Gray, Ass't. U. S. Attorney, for Government. Norman Cohen, Esq., for Defendant.
" "	Defendant in Court with his attorney, Norman Cohen, Esq., for Change of Plea.
" "	Court makes inquiry of defendant as to his physical condition and Defendant Leach states to Court he is under medication at this time.
" "	Mr. Cohen asks leave of Court to attach a copy of a letter to the Petition which has been submitted to the Court, with approval of Court.
" "	Mr. Gray states to Court that the medication which Mr. Leach is taking allows him to comprehend more of what is going on, concurred in by Mr. Cohen.
" "	Defendant waives reading of Indictment, asks, has leave of Court to, and does withdraw his plea of not guilty and pleads guilty.
" "	Court makes inquiry of Defendant as to his understanding of the count in the Indictment to which he is being charged and his understanding of the penalties which can be imposed, concurred in by Defendant Leach.
" "	Mr. Gray states to Court of the conversation he had with Mr. Leach and Mr. Cohen as to the plea bargaining and made it known to Mr. Leach it was solely up to the Court.
" "	Statements made to Court by Mr. Leach in his own behalf and asks Court for a concurrent sentence to run with that of the State of Vermont.
" "	Mr. Gray makes statements to Court of the factual basis of the case had it gone to trial.
" "	ORDERED: that the defendant's request to withdraw his plea of not guilty to the single count Indictment in the case of United States of America vs. Clyde O. Leach, Cr. 74-24, is granted. The plea is accepted and the Court will at this time enter an order to that effect.
" "	ORDERED: that a pre-sentence investigation and report be made and the case will be adjourned until that has been accomplished.
" "	Court advised Mr. Leach that if he had any concern about his competency in this particular proceeding that he is

DATE 1974	PROCEEDINGS
June 12	perfectly capable of entering a plea at this time and if he desires to have the Government request any examination to be made, that he direct that examination to be made within the next twenty-four hours.
" "	ORDERED: that the plea is accepted unconditionally, however, and if Mr. Leach wishes to have that examination made, it should be made within the time period.
" "	Filed Petition to Enter Plea of Guilty and Order Entering Plea. 21.
July 8	Deft's Motion to withdraw plea of guilty. 22.
" 11	In Court before Judge Holden. David Reed, Esq., ASST. U.S. Atty. for Government. Defendant present with his Attorney Norman Cohen. Esq. Hearing on Defendant's Motion to withdraw plea of guilty.
" "	Statements made to Court by Mr. Cohen in support of Defendant's motion; and opposed by Mr. Reed for Government.
" "	Clyde O. Leach sworn by Clerk, was examined by Mr. Cohen for Defendant; Cross-examined by Mr. Reed for Government. Court makes inquiries.
" "	Ordered: Defendant allowed to withdraw plea of guilty and enter a plea of not guilty. Trial by Jury is set for 9:30 A.M., July 23, 1974 at Rutland, Vt.
" 15	Filed two Government's Subpoena to Testify returned served. 23.
" 18	Order -- Application for subpoena of Donna Leach by deft. is granted; Clerk shall issue subpoena forthwith; and cost of same shall be paid pursuant to Rule 17(b) FRCP. Mailed copy to counsel. 24.
" "	Filed Defendant's Ex Parte Application for Subpoena, Witness Fees and Travelling Expenses. 25.
" "	Filed Affidavit. 26.
" 22	Filed Government's Subpoena to Testify returned served. 27.
" 23	Filed Defendant's Motion for Court to Furnish Copy of Instructions to Jury. 28.
" "	Filed Defendant's Request for Jury Instructions. 29.
" "	Trial by Jury begun before Judge Holden. David A. Reed, Ass't. U. S. Attorney for Government. Norman Cohen, Esq., for Defendant.
" "	A Jury was impaneled by the Clerk.
" "	ORDERED: that one alternate Juror be drawn and one alternate juror was drawn by the Clerk.
" "	The Oath to Petit Jurors in criminal cases was administered by the Clerk.
" "	Filed Defendant's Ex Parte Application for Subpoena, Witness Fees and Travelling Expenses. 30.
" "	Filed Affidavit. 31.
" "	Filed Order -- Application for subpoena of Mrs. Linda Bitner by defendant is granted; Clerk shall issue subpoena forthwith; and cost of same shall be paid pursuant to Rule 17(b) FRCP. 32.
" "	In Chambers, attorneys and defendant present, Mr. Reed moves for a hearing on the matter of defendant's admission to the crime given to FBI Agent Mee.
" "	ORDERED: Motion for hearing denied.
" "	Mr. Cohen moves to dismiss the Indictment; that the Grand Jury testimony is based on hearsay, objected to by Mr. Reed.
" "	ORDERED: Motion to dismiss the Indictment is denied.
" "	In open Court, Jury present.
" "	At the Bench, attorneys and defendant present, Mr. Reed moves that all witnesses for both sides be excluded from the Courtroom, objected to by Mr. Cohen.



DATE	PROCEEDINGS
1974	
July 23	In open Court it was announced by the Court that all witnesses
	who are to testify are to be excluded from the Courtroom.
"	Opening statements were made to the Jury by Mr. Reed.
"	At the Bench, attorneys and defendant present, Mr. Cohen
	moves for a mistrial.
"	ORDERED: Motion is denied.
"	Mr. Reed continues his opening statements.
"	Mr. Cohen reserves his right to make an opening statement
	until the completion of Government's case.
"	The following witnesses, sworn by Clerk, were examined for
	Government: James P. Sennett, Edgar Lee Bousley and
	Douglas Brian Shand.
"	24 Trial resumed.
"	Filed Government's Subpoena to Testify returned served. 33.
"	Frank A. Baker, sworn by Clerk, was examined for Govern-
	ment.
"	Jury excused.
"	Hearing on identification of photographs.
"	Frank A. Baker continued to be examined for Government.
"	Court makes inquiry of witness.
"	Mr. Cohen moves for the identification of photographs to be
	suppressed.
"	ORDERED: the Court finds that the identification by this
	witness at the time he was confronted with the photo-
	graphs that appear in the series, Government's 5, is
	not suggestive or to give rise of any likelihood that
	there was suggestiveness by the authorities in Manchester
	at the time and place in question.
"	Court informs Mr. Baker he was informed at the Bench by
	counsel out of hearing of the Jury that he had had an
	opportunity to consult with counsel concerning this
	whole transaction and that it might incriminate him
	and asked Mr. Baker if he would like to continue in
	this case, concurred in by Mr. Baker.
"	Gordon Adams, sworn by Clerk, was examined for Government.
"	Mr. Cohen again renews his motion.
"	ORDERED: Motion is denied. Court reaffirms that the photo-
	graphs are not suggestive as to witness Baker and we
	will resume the trial.
"	Jury present.
"	Frank A. Baker was recalled and continued to be examined
	for Government.
"	James C. Mee, sworn by Clerk, was examined for Government.
"	Jury excused.
"	Hearing on interview by Mr. Mee with defendant Leach.
"	James C. Mee continued to be examined for Government.
"	Court makes inquiry of witness.
"	Mr. Cohen moves for suppression of the statement, Govern-
	ment's Exhibit 2, on the grounds the form is misleading.
"	ORDERED: The motion to suppress is denied.
"	Jury present.
"	Mr. Reed continues his examination of Mr. Mee.
"	Mr. Cohen renews his motion for suppression of the statement
	(Government's Exhibit 2) in that it is inadmissible to
	what Mr. Leach said, objected to by Mr. Reed.

DATE 1974	PROCEEDINGS
July 24	ORDERED: Motion to suppress is denied.
" "	Mr. Reed continues his examination of Mr. Mee.
" "	Frank A. Baker was recalled and further examined for Government.
" "	Thomas A. Delaney, sworn by Clerk, was examined for Government.
" "	Court states record may show that consultation with defendant the qualifications of witness Delaney, Special Agent of the FBI, is an expert and qualified to give information on the subject.
" "	Mr. Reed continues his examination of witness Delaney.
" "	Court makes inquiry of witness.
" "	At 2:35 P.M. Government rests.
" "	Jury excused.
" "	Mr. Cohen renews his motion to dismiss the Indictment, objected to by Mr. Reed.
" "	ORDERED: Renewed motion to quash the Indictment is denied.
" "	Mr. Cohen renews his motion of the quality of the hearsay evidence of the Grand Jury.
" "	ORDERED: Motion to dismiss is denied.
" "	Mr. Cohen moves the Court for a directed verdict of acquittal.
" "	ORDERED: Defendant's motion for a directed verdict of acquittal is denied.
" "	Jury present. Opening statements were made to the Jury by Mr. Cohen.
" "	The following witnesses, sworn by Clerk, were examined for Defendant: Dale Robert Bittner, Sr. and Clyde Orton Leach.
" "	Court makes inquiry of witness Leach.
" 25	Trial resumed.
" "	Clyde Orton Leach was recalled and recross-examined by Mr. Reed.
" "	The following witnesses, sworn by Clerk, were examined for Defendant: Mrs. Donna Belle Leach and Mrs. Pearl H. Coli.
" "	Clyde Orton Leach was recalled and further examined for Defendant.
" "	At 11:42 A.M. Defendant rests. Government rests. Evidence closed.
" "	The following witnesses, sworn by Clerk, were examined for Government in rebuttal: Mrs. Camilla Bousley, Paul Picher and Reginald Lafley.
" "	Lt. Morris A. Beauregard, sworn by Clerk, was excused from testifying in rebuttal.
" "	James C. Mee was recalled and examined by Mr. Reed in rebuttal.
" "	At 2:20 P.M. Government rests in rebuttal. Defendant rests. Evidence closed.
" "	Jury excused.
" "	At the conclusion of all the evidence, Mr. Cohen renews his motion to dismiss the Indictment at this time.
" "	ORDERED: Motion to quash the Indictment is denied.
" "	Mr. Cohen moves for a directed verdict of acquittal on behalf of defendant on the grounds the Government has failed to make a case, objected to by Mr. Reed.
" "	ORDERED: Motion for directed verdict of acquittal for defendant is denied.
" "	In Chambers, attorneys and defendant present, Court and counsel discuss various issues to be presented in the Charge to the Jury. Court informs counsel of specific issues presented in their Requests to Charge, of his acceptance of some in whole or in part. Court stated to counsel the supplemental requests will be denied.
" "	Mr. Cohen informs Court of defendant's motion for Court to Furnish



Cr. 74-24      App. S - 8  
U.S.A. vs. Clyde O. Leach

DATE 1974	PROCEEDINGS	
July 25	Copy of Instructions to Jury.	
" "	ORDERED: Motion is denied.	
" "	Jury present.	
" "	Opening arguments were made to the Jury by Mr. Reed, followed by Mr. Cohen.	
" "	Closing arguments were made to the Jury by Mr. Reed.	
" "	ORDERED: That Mr. Harry J. Loomis be appointed Foreman of the Jury.	
" "	At 3:28 P.M. Court commences Charge to the Jury, concluding at 3:58 P.M.	
" "	At 3:59 P.M. the Jury retire to deliberate the case.	
" "	At 5:48 P.M. the Jury come into Court and report a verdict of guilty.	
" "	Mr. Cohen moves that Jury be polled.	
" "	ORDERED: Motion granted.	
" "	The Jury was polled by the Clerk.	
" "	Jury excused.	
" "	Mr. Reed states to Court that Mr. Leach is in State custody and suggests that bail be continued.	
" "	ORDERED: The Court will continue the bail as previously fixed in this case and remand the defendant to the custody of the Marshal for safe keeping.	
" 29	Filed Defendant's Subpoena to Testify returned unexecuted 7-22-74.	34.
" "	Filed Defendant's Subpoena to Testify returned unserved.	35.
" "	Filed Defendant's Subpoena to Testify returned served.	36.
Aug. 1	Filed Subpoena to Testify returned served.	37.✓
" "	Filed Motion for Order enlarging time within which Deft. may file post-trial motions; Motion for new trial and/or judgment of acquittal notwithstanding the verdict; and Motion for waiver of Local Rule 9.	38.
Sept. 3	Filed Authorization for handwriting expert.	39.✓
Sept. 20	In open Court before Judge Holden, defendant not present with his attorney, Norman Cohen, Esq., David Reed, Esq. for Government.	
" "	Hearing on motion for new trial and/or judgment of acquittal notwithstanding the verdict.	
" "	Statements made to Court by Mr. Cohen who states defendant has filed a waiver of presence and therefore is not present in Court. Further statements made in support of motion.	
" "	Statements made to Court by Mr. Reed in opposition of said motion.	
" "	Ordered: defendant's motion for new trial and/or judgment of acquittal notwithstanding the verdict is denied.	
Nov. 19	In Court before Judge Holden. Deft. present in Court with his attorney, Norman Cohen, for sentence. Jerome O'Neill for govt.	
" "	Court makes inquiry of Deft.'s attorney and deft. re pre-sentence report.	
" "	Statements made to the Court by Mr. Cohen for Deft. re mitigation of sentence followed by Mr. Leach.	
" "	Statements made to the Court by Mr. O'Neill for government.	
" "	Filed Judgment and Commitment--Deft. to be committed to the custody of the Attorney General for a period of 4 years, the sentence to be served upon his release from state confinement on which he is presently being held.	40.
" "	Court advised deft. as to his right to appeal	

DATE  
1974

## PROCEEDINGS

Nov 19	Mr. Cohen moves that defendant's bail be continued; objected to by Mr. O'Neill.
" "	Mr. Cohen moves that deft. be released on his own recognizance.
" "	Mr. O'Neill moves that bail be vacated as presently fixed; objected to by Mr. Cohen.
" "	ORDERED: Bail as fixed continued during appeal if appeal taken.
" 21	Filed Deft's Notice of Appeal. Mailed copy to U. S. Attorney, Norman Cohen, Esq., Judge Holden, Court Reporter & Clerk, U. S. Court of Appeals for the Second Circuit.

41.



1 concerning things which should or shouldn't concern you, I  
2 believe also, that the Court will instruct you that the penal-  
3 ties, if there is, well, you would assume there is one, but  
4 the penalty of punishment shouldn't be your consideration.  
5 You should abide by your common sense and your every day  
6 knowledge, which is the corner stone of the Jury system, to  
7 the testimony that you have received and decide which you do  
8 believe. If you do so, then you will find the defendant  
9 guilty, thank you. (3:29 p.m.)

10 THE CLERK: The Crier will make  
11 proclamation for strict silence while the Court delivers the  
12 charge to the Jury.

13 (Crier delivered proclamation for  
14 strict silence in the court room)

15 THE COURT: Ladies and Gentlemen of  
16 the Jury, the Court appoints Mr. LOOMIS as your Foreman.

17 This is a criminal prosecution by the  
18 United States of America against the Defendant, CLYDE O. LEACH.  
19 ment  
20 It comes to the Court by way of a present/of the Grand Jury and  
21 in an indictment which accuses the defendant of unlawfully  
22 transporting a motor vehicle, known to have been stole from  
23 Vermont to New Hampshire, in violation of the laws of the  
24 United States.

25 The case comes on for trial on the  
26 Defendant's plea of "not guilty" to these charges. Now, later  
27 in the course of the instructions, I will refer to the specific  
28 offense alleged in this trial, but before considering the

1 specific charge asserted in the indictment I will instruct you  
2 concerning certain rules, certain general rules, that are to  
3 govern your deliberations in this case.

4 It is your duty as jurors to follow  
5 the law as stated in the instructions of the court and to apply  
6 the rules of law so given to the facts, as you find them to  
7 be from the evidence in the case and you are the sole judges  
8 of the facts.

9 You are not to single out one instruc-  
10 tion alone or one part of the instructions as stated in the  
11 law but you must consider the Court's instructions as a whole.

12 Now, the fact that the defendant has  
13 been indicted by the Grand Jury must in no way influence your  
14 verdict. As I indicated earlier in preliminary instructions,  
15 the indictment is nothing more than a formal method of accusing  
16 the defendant of a crime preliminary to trial.

17 A Grand Jury investigation is necessar-  
18 ily one-sided. The Government presents to it all evidence  
19 favorable to the return of an indictment, whereas the defendant  
20 has no opportunity to present evidence in his behalf.

21 Thus, the indictment is not evidence of  
22 any kind against the accused and does not create any presump-  
23 tion or permit any inference of guilt.

24 Now, credibility of witnesses is an  
important factor in this small case. It is particularly im-  
portant in this case now, how you determine the truth and how  
do you apprise the credibility of the witnesses. Well, you



## CHARGE

1 use your own plain, every day common sense.

2 You have seen the witnesses, you have  
3 observed the manner of their testifying and whatever credit  
4 you may give them must be determined by their conduct and  
5 their manner of testifying, in relation to their interest in  
6 the outcome of the trial.

7 In other words, you again apply your  
8 common sense and your every-day experience. You may, of course,  
9 take into consideration the interest of a witness. An inter-  
10 ested witness is not necessarily unworthy of belief, but it is  
11 a factor which you may consider in determining the weight and  
12 credibility which you will attach to the testimony of any  
13 given witness.

14 If a witness has wilfully testified  
15 falsely to any material fact, you may disregard all of his  
16 testimony or accept only such part of it as you believe worthy  
17 of belief or as it appeals to your reason or judgment.

18 In other words, you should examine the  
19 testimony of each witness and determine whether or not it  
20 has a true ring; whether it is entitled to belief and whether  
21 you, as jurors believe that testimony as a proper and true guide  
22 to the truth.

23 Now, witnesses may be discredited or im-  
24 peached by contradictory evidence or by evidence that at some  
25 other time a witness has made statements inconsistent with  
26 his testimony given here in Court.

27 If you believe that any witness has been

## CHARGE

1 impeached and thus discredited, it is your exclusive province  
2 to give the testimony of the witness such credibility, if any,  
3 as you may think it deserves.

4 Now, evidence at some other time, a  
5 witness other than the accused, has said or done something, or  
6 has failed to say or do something which is inconsistent with  
7 the witness' testimony at the trial, may be considered by  
8 you, the Jury, for the sole purpose of judging the credibility  
9 of the witness, but is never to be considered as evidence or  
10 proof of the truth of the statement made outside the Court by  
11 that particular witness.

12 Where, however, the witness is the  
13 defendant on trial in this case and a party to the proceedings,  
14 by such statement or other conduct if the defendant admits some  
15 fact against his interest, then such statement or his conduct,  
16 if knowingly made or done, may be considered as evidence of  
17 the truth of the facts as he then stated them to be, as well  
18 as to the purpose of judging the credibility of the defendant  
19 as a witness.

20 Now, all evidence relating to any in-  
21 criminatory statement or act or omission claimed to have been  
22 made or done by the defendant, outside of Court, should always  
23 be considered with caution and weighed with care and all such  
24 evidence should be disregarded entirely unless the evidence  
in the case convinces you, the jury, beyond a reasonable  
doubt, that the statement or act or omission, was knowingly  
made or done and if you the jury find that such statement was



1 knowingly made and was voluntarily, it may be given such  
2 weight as you the jury feel it deserves, under all the circum-  
3 stances presented.

4 Now, the testimony of a witness may  
5 be also discredited or impeached by showing the witness has  
6 been convicted on a felony. That is a crime punishable by  
7 imprisonment in a state prison, or a federal prison for a term  
8 of years.

9 Now, prior to conviction, or a prior  
10 conviction does not render a witness incompetent to testify  
11 but is merely a circumstances that you may consider in determ-  
12 ining the credibility of the witness and so in this case, those  
13 witnesses who have stated that they have prior convictions  
14 of offenses against the state or the United States, in judg-  
15 ing their credibility, it is your province as jurors and jury  
16 women to determine the weight to be given to any prior con-  
17 viction as a factor of impeachment.

18 Now, there has been evidence that the  
19 defendant has been convicted of prior criminal conduct. Now,  
20 such evidence bears on the matter of the credibility of the  
21 defendant as a witness. It is not to be considered as bearing  
22 on his guilt or innocence, in this particular case.

23 The defendant has elected to testify in  
24 his own behalf. The law permits one accused of a crime, to  
25 testify in his own behalf if he so desires and he is a compe-  
26 tent witness.

27 Now the defendant's testimony is to be

1 judged in the same way as that of any other witness, bearing  
2 in mind, of course, that he has a genuine interest in the outcome  
3 of the trial and you may consider his testimony in the light  
4 of the interest that he has.

5 Now, you are to consider only the evi-  
6 dence in the case as it has been disclosed during the course  
7 of the trial but in your consideration of the evidence, you are  
8 not to be limited to the bald statements of witnesses. In  
9 other words you are not limited solely to what you hear and see  
here in the court room as the witness may testify to it.

10 You are permitted to draw from the  
11 facts which you find that have been proved, such reasonable  
12 inferences as you feel are justified in the light of your  
experience as men and women of affairs.

13 Now, the law presumes a person accused  
14 of a crime to be innocent of the crime with which he is  
15 charged and so although a defendant is accused he begins the  
16 trial with a clean slate.

17 The presumption of innocence continues  
18 throughout the trial down to the time that in the jury room,  
19 if that time does arrive, when you are satisfied from all the  
20 evidence and beyond a reasonable doubt that the defendant is  
guilty of the crime charged against him.

21 Now, the law permits nothing but legal  
22 evidence presented before this jury to be considered in sup-  
23 port of any charge against the accused. So, the presumption  
24 of innocence alone is sufficient to acquit the defendant and



1 unless you are satisfied beyond a reasonable doubt of his guilt  
2 from all of the evidence in the case.

3 Now, burden of proof is on the Govern-  
4 ment to prove each element of the charge against the Defendant,  
5 beyond a reasonable doubt. You cannot find the Defendant  
6 guilty unless you determine that The Government has established  
7 by the evidence each and every essential element of the crime  
8 charged against him, beyond a reasonable doubt.

9 However, to support a *plea* of guilty  
10 you need not find every fact as claimed by the Government,  
11 beyond a reasonable doubt, you need only find that the crime  
12 charged in each and all of the essential elements has been  
13 proven beyond a reasonable doubt, taking into consideration  
14 all of the evidence before you.

15 Now, reasonable doubt is a fair doubt  
16 based upon reason and common sense and arising from the state  
17 of the evidence. By proof beyond a reasonable doubt you are  
18 not to understand that all doubt is to be excluded. It is  
19 rarely possible to prove anything to an absolute certainty.  
20 It must be a substantial doubt, such as would make an honest  
21 and sensible and fair-minded person hesitate to act in a  
22 serious and more important matters where ascertainment of the  
23 truth is conscientiously being sought.

24 A reasonable doubt may arise not only  
25 from the evidence but also from the lack of evidence.

26 The law never imposes upon a defendant  
27 in a criminal case the burden, or duty, or producing any

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1 evidence and since the burden is always on the Government to  
2 prove the accused guilty of every essential element of the crime  
3 charged the Defendant has the right to rely upon a failure of  
4 the prosecution to establish such proof.

5 A defendant may also rely upon evi-  
6 dence brought on cross-examination, of witnesses called by  
7 the Government. And if after an impartial consideration of  
8 all of the evidence you can candidly say that you are not  
9 satisfied of the guilt of the defendant beyond a reasonable doubt  
10 you should find the Defendant "not guilty".

11 Now, there are two types of evidence  
12 which you may consider in determining whether or not the  
13 Defendant is guilty as charged. One is direct evidence such  
14 as the testimony of an eye witness. The other is circumstan-  
15 tial evidence which consists of proof of a chain of circum-  
16 stances from which a conclusion regarding essential facts in  
17 the case may logically be drawn.

18 Regardless of the nature of the evi-  
19 dence, the law requires before convicting a defendant, you  
20 must be satisfied of the defendant's guilt by the measure of  
21 proof that I have already indicated.

22 Now to illustrate circumstantial  
23 evidence we all rely upon circumstantial evidence in our daily  
24 lives. For instance if a hunter goes into the woods hunting  
25 rabbits and in the snow is on the ground he sees rabbit tracks,  
26 he may not have seen the rabbit go by but he has the right,  
27 from the circumstances presented to him, to believe that a



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1 rabbit has passed his way recently and he draws that conclusion  
2 from the fact that there are tracks on the snow.

3 Now, much of the evidence introduced in  
4 this case is circumstantial in nature. That is, there is no  
5 testimony of an eye witness concerning the removal of the 1970  
6 Volkswagon from the parking lot at Lindholm Motors after the  
7 place closed for business on the afternoon of February second,  
8 1974, and, there has been no direct evidence that the defendant  
9 that is that the defendant was observed operating a motor  
10 vehicle enroute from Vermont to New Hampshire, nor, that the  
11 vehicle was in fact stolen.

12 The Government relies on circumstantial  
13 evidence to establish these facts and it relies on proof of  
14 the prevailing circumstances for proof of the fact that the  
15 Defendant knew that the vehicle had been stolen when it was  
16 transported. It relies on circumstantial evidence, as well  
17 as the admission, of the claimed admission which the Defendant  
18 is said to have made to Special Agent MEE.

19 Now, circumstantial evidence is legal  
20 and proper for you to consider and you may reach your verdict  
21 upon this type of evidence, alone, if you are persuaded by a  
22 - beyond a reasonable doubt, that the crime alleged in the  
23 indictment was committed and the defendant was guilty of its  
24 commission. But bear in mind the circumstances must be such  
25 as will leave the guarded discretion of just and reasonable  
26 men and women to the conclusion that the - of the defendant's  
27 guilt. And you should not draw any inferences that do not in

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1 in your minds, properly and logically, arise from the facts  
2 established by the evidence.

3 Now the evidence in the case also  
4 raises the question of whether the Defendant was in fact the  
5 criminal act, actor, and necessarily your resolving any con-  
6 flict or uncertainty in testimony on that issue. Now, I refer  
7 particularly to the testimony of FRANK BAKER who gave evidence  
8 that it was the defendant who sold and signed the Bill of Sale  
to the 1970 Volkswagon convertible.

9 The strength of his testimony depends  
10 upon his identification of the defendant and the burden of  
11 proof is on the prosecution with reference to this factor or  
12 this element of the crime and this burden includes proving,  
13 beyond a reasonable doubt, the identity of the defendant as  
the perpetrator of the crime charged.

14 The defendant has also denied that he  
15 signed the Bill of Sale for the Volkswagon convertible. That  
16 calls into question the signature, the signatures that appear  
17 on Exhibit #1.

18 Now, where the genuineness of the  
19 handwriting is in issue, any proved or admitted handwriting of  
20 a person may be received in evidence to be used as an exemplar  
21 or a specimen for comparison with the questioned handwriting.  
That is, the handwriting that is in dispute.

22 The rules of evidence ordinarily do not  
23 permit witnesses to testify as to opinions or conclusions and  
24 exception to this rule exists as to those whom we refereed as



1 expert witnesses and by that we mean, witnesses who by educa-  
2 tion and experience have become expert in some art, science,  
3 profession, or calling, in such witnesses. And such witnes-  
4 ses, if the Court rules they are qualified, may state an opinion  
5 as to a relevant and material matter in which they profess to  
6 be an expert and they also state the reasons for their opinion.

7 In this connection, Special Agent  
8 DELANEY was called by the Government as a handwriting expert  
9 and you should consider the expert opinion of Special Agent  
10 DELANEY which was received in evidence and give it such weight  
11 as you think it deserves. If you decide that the opinion of  
12 this witness is not based upon sufficient education or experience  
13 or training or if you should conclude that the reasons given  
14 in the support of the opinion are not sound or that the opinion  
15 is out-weighted by other evidence, you may disregard that opin-  
16 ion entirely. On the other hand, if you believe the witness  
17 has good qualifications and has had good training and exper-  
18 ience, is knowledgeable, you may give the witness' testimony  
19 - the testimony of that witness weight and attach importance  
20 to its opinion.

21 Again, like experts, experts like other  
22 witnesses in the last analysis, it is the question of the weight  
23 to attach to his testimony is for you and you, alone to de-  
24 termine.

Turning now to the offense charged in  
the indictment. It is charged that on or about February 2 and  
3, 1974, in the District of Vermont, the Defendant, CLYDE O.

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1 LEACH did wilfully transport and cause to be transported a  
2 certain motor vehicle, namely a 1970 Volkswagon in inter-state  
3 commerce, from Lindholm Motors in Rutland, Vermont, to Valley  
4 Motors in Manchester, New Hampshire and that the Defendant  
5 knew the motor vehicle had been stolen in violation of Title  
6 18 of Section 2312 of the United States Code. That is the  
7 Federal Statute relating to such offenses.

8 This statute provides in part, that  
9 whoever transports in inter-state commerce a motor vehicle,  
10 knowing the same to have been stolen, shall be guilty of an  
11 offense against the laws of the United States.

12 This statute is known as the National  
13 Motor Vehicle Theft Act. The term inter-state commerce, means  
14 commerce between one state and another state and whoever drives  
15 an automobile under its own power across state lines from one  
16 state to another, transports a motor vehicle in inter-state  
17 commerce.

18 Before a defendant may be found guilty  
19 of a crime, the prosecution must, - of this crime, - the prose-  
20 cution must prove beyond a reasonable doubt, that under the  
21 statute which I have just described, the defendant was forbid-  
22 den to do the act charged in the indictment and that he inten-  
23 tionally committed the act.

24 The essential elements which are re-  
25 quired to be proved in order to establish the offense alleged  
26 in the indictment, is first the act of transporting a motor  
27 vehicle in inter-state commerce. Secondly, that the vehicle



1 had been stolen.

2 Third, that the transportation of the  
3 automobile was done wilfully and with knowledge that the  
4 vehicle had been stolen. The offense is complete when these  
5 elements just stated are established by the evidence in the  
6 case, and the Government is not required <sup>to prove</sup> who stole the vehicle  
7 described but the Government must prove in fact it was a stolen  
8 vehicle.

9 As stated before with respect to an  
10 offense charged in this case, specific intent must be proved  
11 beyond a reasonable doubt before there can be a conviction and  
12 the burden is always upon the prosecution to prove beyond a  
13 reasonable doubt, the essential elements of the crime charged.

14 Now, an act is done wilfully if its  
15 done voluntarily and intentionally and with specific intent to  
16 do something that the law forbids. That is to say with bad  
17 purpose, either to disobey or disregard the law.

18 The word stolen is used in the crime  
19 of inter-state transportation of motor vehicles, includes all  
20 wrongful and dishonest taking of a motor vehicle with the  
21 intent to deprive the owner of the rights and benefits of his  
22 ownership.

23 Now, possession of property recently  
24 stolen, if not satisfactorily explained, is a circumstance  
from which the jury may reasonably draw the inference that the  
persons in possession knew that the property had been stolen.  
So it is the possession of property recently stolen, if not

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1 satisfactorily explained, is also a circumstance from which you  
2 the Jury, may reasonably draw the inference and find in the  
3 light of surrounding circumstances, that the person in posses-  
4 sion participated in some way in the theft of the property.  
5 The term "recently" is a relative term which has no fixed  
6 meaning. Whether property may be considered as recently  
7 stolen depends upon the nature of the property and all of  
8 the facts and circumstances shown by the evidence.

8 If you find from the evidence, and  
9 beyond a reasonable doubt, that the motor vehicle described in  
10 the indictment was stolen and was transported in inter-state  
11 commerce as charged and that while recently stolen, the motor  
12 vehicle was in the possession of the accused, in another State  
13 than that from which it was stolen, you, as jurors, would be  
14 entitled to draw from these facts the inference that the  
15 motor vehicle was transported or caused to be transported in  
16 inter-state commerce by the accused with knowledge that it was  
17 stolen, unless possession of the recently stolen property  
18 by the accused from such other state, is explained to your  
19 satisfaction by other facts and circumstances.

19 Again, it is the exclusive province  
20 of you, the jury, to determine whether the facts and circum-  
21 stances shown by the evidence, warrant any inference which the  
22 law permits you to draw from the possession of the recently  
23 stolen property, if you find the defendant was in fact in  
24 possession of the Volkswagon at the time and place claimed.

If the possession which the accused may



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1 have had of recently stolen property is consistent with inno-  
2 cence, or if you entertain a reasonable doubt of guilt in that  
3 regard, then the Jury should acquit the accused.

4 Now evidence has been introduced by  
5 the Defendant to establish an alibi. This amounts to a content  
6 tion by the defendant that he was not present at the time when  
7 or the place where, he is alleged to have committed the offense  
8 charged in the indictment.

9 Now, if after consideration of all the  
10 evidence, you have a reasonable doubt as to whether the de-  
11 fendant was indeed present at the time and place the alleged  
12 offense was committed, you must acquit him.

13 Now then from all the evidence pre-  
14 sented during the trial, you are to determine whether the  
15 Government has proved beyond a reasonable doubt, first, that  
16 a 1970 Volkswagon convertible was stolen here in Rutland,  
17 secondly that on or about February 2 or 3 or dates in that  
18 approximate time, the defendant, CLYDE O. LEACH, did, unlawfully  
19 wilfully and knowingly transport this motor vehicle in inter-  
20 state commerce from Rutland, Vermont, to Manchester, New  
21 Hampshire, and third, that the Defendant, CLYDE O. LEACH, knew  
22 that this motor vehicle had been stolen.

23 If you find as to each of these elements  
24 of the offense charged, beyond a reasonable doubt, your verdict  
25 should be guilty. If you are not so persuaded and not so con-  
26 vinced, on each of these points, you should find the Defendant  
27 "not guilty".

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1 Now, any testimony which has been  
2 excluded or which has been stricken from the record, is not  
3 evidence in the case and you will entirely disregard it  
4 in arriving at your verdict. Similarly, the arguments of the  
5 counsel and any statements which they made during the course  
6 of their arguments which they made during the course of their  
7 arguments, or during the course of the trial, are not evidence  
8 of the facts and must not be so considered by you.

9 You must render your verdict from the  
10 facts as you find them from the exhibits and from the testi-  
11 mony of the witnesses and it is your recollection of the  
12 witnesses' testimony and not the attorneys statements which  
13 - of those facts, - which will control you in reaching your  
14 decision.

15 I want to again suggest to you that  
16 the findings in this case are entirely for you. The law is  
17 for the Court. Whatever references I have made to the evidence  
18 or the claims of the parties is only for the purpose of apply-  
19 ing the principles of law to the issues in this case and with-  
20 out any purpose of indicating in the least degree how the  
21 Court may think the case ought to be decided on the facts.

22 Again, that is for you to determine.

23 The exhibits which have been received  
24 into evidence during the trial are for your consideration.  
25 During the course of your deliberations, you may have them  
26 with you in the jury room.

27 You have been chosen as jurors in this



1 case to try the issues of fact presented by the allegations  
2 of the indictment and the denial made by the defendant on his  
3 plea of "not guilty".

4 You are to perform this duty without  
5 bias or prejudice as to any party. The law does not permit  
6 jurors to be governed by sympathy, prejudice or public opinion.  
7 Both the defendant and the public expect that you will care-  
8 fully and impartially consider all the evidence in the case,  
9 follow the law as stated by the Court and reach a true and  
just verdict.

10 You will be required to give your  
11 verdict or state your verdict, orally. Your verdict, of  
12 course, must be unanimous and it will be announced by your  
13 Foreman after you have reached a verdict when called upon to  
14 announce that verdict here in open court.

15 If, during the course of your deliberations it is your desire to have any testimony referred to  
16 taken down by the Reporter, if you will make that known by  
17 note signed by the Foreman and given to the Marshal, he will  
18 bring it to my attention and the same is true of any question  
19 that you may have, if you have any questions concerning the  
20 Court's instructions or other matters, you will write the  
question out, have the Foreman sign it, deliver it to the  
21 Marshal, I will take such action as may be necessary under the  
22 circumstances.

23 If you do wish to have any testimony  
24 read back, please let us know as far in advance as possible

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1 so that the reporter may refer to his notes and find the proper  
2 place where the testimony you are interested in, is and read  
3 it back from his notes.

4 The Court will entertain any objections  
5 to the Charge.

6 MR. REED: No objections.

7 MR. COHEN: No objections.

8 THE COURT: The Marshal will come  
9 forward to be sworn.

10 (Marshal duly sworn by the Clerk)

11 THE COURT: If your deliberations  
12 carry you beyond the time when you are hungry, if you will  
13 let the Court know, the Marshal will arrange to have the  
14 evening meal provided for you and simply give him enough  
15 notice so he can make that arrangement without difficulty.

16 Ladies and Gentlemen, you make take  
17 the case.

18 At 4:00 p.m. The Jury retired to the  
19 Jury ?Room to deliberate upon their verdict.

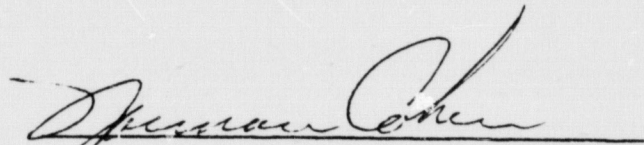
20 THE COURT: Yes, Mr. REED, the Court  
21 wants to, you are now excused from your participation in the  
22 trial and the Court wishes to express its appreciation for  
23 your attendance. You were very essential back-up man in these  
24 proceedings and we appreciate that your attendance has caused  
25 you some inconvenience, but with that, you are excused.

26 MR. REED: If I may ask, I brought  
27 over one of the Jurors. Am I to wait or will she be able to



CERTIFICATE OF SERVICE

I, Norman Cohen, Esq. hereby certify that I have served the foregoing Supplementary Appendix for Appellant Clyde O. Leach upon the United States of America by mailing a copy of the same, postage prepaid to David A. Reed, Esq., Assistant United States Attorney, P. O. Box 10, Rutland, Vermont 05701, this 11th day of March, 1975.

  
Norman Cohen, Esq.

CARL O. ANDERSON  
ATTORNEY AT LAW  
26 WEST STREET  
P. O. BOX 755  
RUTLAND, VT. 05701

(802) 775-2351